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Attorneys at Law

 Suite 2800 1100 Peachtree St.  
 Atlanta GA 30309-4530  
 t 404 815 6500 f 404 815 6555  
 www.KilpatrickStockton.com

June 10, 2005

 direct dial 404 815 6291  
 direct fax 404 541 3467  
 MBertelson@KilpatrickStockton.com

## FAX

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Centralized Fax Dept. GAU 3737 Examiner Ruth S. Smith	703.872.9306	U.S. Patent and Trademark Office Alexandria, VA 22313-1450

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 6  
 PAGES (WITH COVER)

 5418  
 REFERENCE NO

 50642/270979  
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## COMMENTS

 Applicant: Christopher P. Carson  
 Title: Surgical Navigation Systems and Processes for High Tibial Osteotomy  
 Serial No./Docket No.: 10/084,291 50642/270979  
 Filed: 02/27/2002

## PAPERS SUBMITTED:

1. PTO/SB/21 – Transmittal Form;
2. PTO/SB/22 – Petition for Extension of Time Under 37 CFR 1.136(a);
3. PTO-2038 – Credit Card Payment Form; and
4. Response to Restriction Requirement of 04/29/2005.

 Date: June 10, 2005  
 By: Michael A. Bertelson, Reg. No. 54,713

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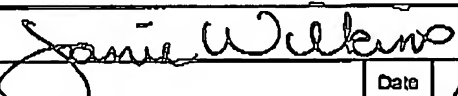
<b>TRANSMITTAL FORM</b>  <small>(to be used for all correspondence after initial filing)</small>	Application Number	10/084,291
	Filing Date	02/27/2002
	First Named Inventor	Christopher P. Carson
	An Unit	3737
	Examiner Name	Ruth S. Smith
Total Number of Pages in This Submission	Attorney Docket Number	50642/270979

ENCLOSURES (Check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input checked="" type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavit/declaration(s) <input checked="" type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement  <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
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## SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	KILPATRICK STOCKTON LLP		
Signature			
Printed name	Michael A. Bertelson		
Date	June 10, 2005	Reg. No.	54,713

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This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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JUN 10 2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Christopher P. Carson

SERIAL NO.: 10/084,291

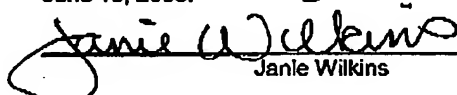
GROUP ART UNIT: 3737

FILED: Feb. 27, 2002

EXAMINER: Ruth S. Smith

FOR: **Surgical Navigation Systems  
and Processes for High Tibial  
Osteotomy**

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Janie Wilkins

Attorney Docket No.: 50642/270979

Commissioner for Patents  
P.O. Box 1450  
Alexandria VA 22313-1450

DATE: June 10, 2005

RESPONSE TO ELECTION / RESTRICTION REQUIREMENT

Sir:

In response to the April 29, 2005 Office communication, please consider the following remarks and provisional election with traverse. In the April 29, 2005 Office communication, the Examiner required restriction among the following claim sets:

- I. Claims 1-11: Drawn to a process, classified in class 600, subclass 424.
- II. Claims 12-14: Drawn to an apparatus, classified in class 600, subclass 424.

Applicant provisionally elects claims 1-11 with traverse.

Applicant respectfully submits that the restriction requirement is erroneous and should be withdrawn. There are two criteria for a proper requirement for

Application No. 10/084,291  
Amendment Dated June 10, 2005  
Reply to Office Action of April 29, 2005

restriction between patentably distinct inventions: (1) the inventions must be independent or distinct as claimed; and (2) there must be a serious burden on the Examiner if restriction is required. MPEP § 803.

According to MPEP § 803, the Examiner must examine an entire application on the merits, including claims to distinct or independent inventions, so long as the search and examination of the entire applications can be made without serious burden. With respect to the restriction among the claims pending in the present application, Applicant respectfully submits that the Examiner has failed to establish any undue burden placed upon the PTO by the presence of all of the claims in the same application. A search of one invention would likely produce art related to the other inventions. Indeed, claims 1-11 and claims 12-14 are both classified in the same class and subclass. Applicant respectfully submits that examination of the claims of the entire application will not impose an undue burden.

### CONCLUSION

In light of the provisional election with traverse, the undersigned is of the opinion that this application is in a condition for allowance and respectfully requests the same.

A request for a one-month extension of time accompanies this response as well as a form PTO-2038 Credit Card Payment Form. No other fees are believed due at this time. To the extent that belief is incorrect, the Commissioner is authorized to charge any additional fees that may be due for this Response to